

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-9243-2024

Date of Decision: 26.02.2024

Sumit

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Dr. J.S. Malik, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 493 dated 05.07.2023 registered under Sections 363, 366-A and 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short-‘the POCSO Act’) at Police Station City Hansi, District Hissar.

The aforesaid FIR was registered on the basis of application/complaint moved by the father of the victim/complainant, which is reproduced as under:-

“The brief circumstances from the case are as follows that on 04.07.2023, ASI Rajesh Kumar no.77/Hansi was surprised in the presence of EHC Joginder 644 and the complainant Satyanarayan came to the police chocki and give a application to ASI Rajesh Kumar No.77/Hansi, police post incharge Bus Stands Hansi. Sir It is submitted that I, Sateynarayan S/o Sube Singh R/o Kath Mandi Hansi Distt. Hansi. I am a manual laborer. I have 3 children in which

one son aged 13 years and younger girl have already married and second one is victim aged 17 years 8 month who is minor. She is completed her 12th class this years. On dated 03.07.2023, our family members were sleeping after taking dinner. In the morning when I woke up, found my child/daughter victim was missing and after that I trying to trace her from all our relationship and nearby neighbors. It did not come in my notice that SUMIT S/o Aazad has enticed away my daughter/victim. We found in a CCTV one person named not known enticed my daughter after some time we are trying to trace her then came to know that person name Sumit s/o Krishan caste Jatt R/o Barasi Jatan Distt. Bhiwani. my daughter/victim aged 17 years and 8 month, and is minor. You are requested to take action immediate strict action against SUMIT s/o Krishan and trace out my daughter.”

Learned counsel for the petitioner, *inter alia*, submits that at the time of alleged incident, the victim was 17 years and 08 months old; whereas the present petitioner was 21 years of age. The parties were in a consensual relationship. It is further submitted that the victim and the complainant both stand examined by the trial Court as PW-6 and PW-4, as is evident from their testimonies Annexures P-4 and P-3, respectively. Both the victim and the complainant have turned hostile before the trial Court. The petitioner has been in custody since 06.07.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Learned counsel for the State has filed custody certificate dated 24.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 07 months and 18 days. As per custody certificate, there is no other case against the petitioner. It is submitted by learned counsel for the State that the FSL report is positive, however, the DNA report is still awaited. It is further

submitted that at the time of alleged incident, the victim was 17 years and 08 months of age, and under the provisions of POCSO Act, any alleged consent of victim is immaterial.

At this stage, reference may be made to the judgment of Karala High Court in **Anoop vs. State of Kerala and others 2022 SCC Online Ker 2982** wherein in para 40 it has been held as follows :-

“40. Therefore, on a profound consideration of the ground realities, the definition of ‘Child’ under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

This Court upon consideration of the complete facts and circumstances of the present case, is in consonance with the abovesaid view taken by the High Court of Kerala.

Thus, having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that

the custody certificate reveals that there is no other case against the petitioner; and that the material witnesses i.e. the victim and complainant already stand examined and have turned hostile; and also the fact that conclusion of trial will take considerable time, therefore, no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Sumit S/o Krishan, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

26.02.2024
rishu

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No